



Greater Hartford Legal Aid

**Testimony of Susan Garten
Greater Hartford Legal Aid, Inc.
Before the Sentencing Commission
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The legal services programs in Connecticut have been active in re-entry advocacy since 2000. Our primary focus has been on reducing barriers to employment for low-income men and women with criminal records.

We represent applicants before the state Board of Pardons and have secured pardons for dozens of applicants, giving them an opportunity to live their lives without the burden of a criminal history. We have also filed Title VII actions on behalf of job applicants denied employment based on their criminal records, arguing that employers' use of such records has a disparate impact on Blacks and Hispanics. In 2002, we spearheaded a successful legislative initiative to prohibit employers from requiring job applicants to disclose their erased criminal records and to prohibit employers from denying employment solely on the basis of erased criminal records (CGS §31-51i).

In 2006, my legal services colleagues and I advocated for the creation of a mechanism that would officially recognize that a recent ex-offender had demonstrated evidence of rehabilitation. That resulted in the enactment of the provisional pardon law, which grants authority to the state Board of Pardons and Paroles to issue provisional pardons (CGS §54-130a).

Here are the positive features of the provisional pardon law:

- ° The Board of Pardons may grant a provisional pardon at any time after sentencing, even while the applicant is on probation or parole (CGS §54-130e(g)).
- ° The Board can specify that the convictions for which it grants a provisional pardon should not be a barrier to all employment and all licenses, or to specific jobs and specific licenses (CGS §54-130e(b)).
- ° Employers who deny jobs to applicants who have been granted a provisional pardon are violating state law (CGS §§ 31-51i(d), (e)).

However, the provisional pardon law needs additional publicity and a private right of action to challenge violations. There has not been a concerted effort to educate potential beneficiaries or employers about the significance of provisional pardons.

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There is no clear enforcement provision to challenge employers who deny jobs to applicants who were granted a provisional pardon. We would welcome the Commission's support for adding a private right of action in this legislative session.

Even with these operational problems, provisional pardons meet an important need for ex-offenders who have not reached the threshold eligibility criteria to apply for a full pardon- three years since a misdemeanor conviction, five years since a felony conviction. The synopsis says that the Commission is considering whether Certificates of Rehabilitation should replace or supplement provisional pardons. I would urge that provisional pardons be retained.

Current law bans the denial of employment based on convictions for which a person has received a provisional pardon. This is an absolute rule and is stronger than the pending proposal requiring that a prospective employer employ a rebuttable presumption that a person who received a Certificate has been rehabilitated. Also, use of the word "rehabilitation" might create the mistaken impression that an individual with a certificate is recovering from drug or alcohol abuse. The word "pardon" has a more positive connotation for employers than "rehabilitation."

Finally, the Board of Pardons has recently implemented a process by which it converts some provisional pardons to full pardons after a period of time during which the provisional pardon holder remains crime-free. That administrative benefit would be a shame to lose.

I'd like to offer additional comments on some of the proposals outlined in the Commission's synopsis.

First, we agree that it could be helpful to explicitly include in state law the adjudicatory standard used by the EEOC and courts when deciding whether employers can legally deny jobs to individuals because of criminal convictions. CGS §46a-79, says that it is state policy that employers give favorable consideration to providing jobs to qualified individuals with criminal records. This could be amended to say that employers may reject applicants based on prior convictions only if the rejection is "job related and consistent with business necessity" for the position in question. See EEOC Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e *et seq.* (4/25/12).

Second, the legal services programs also support extending state law to address the barriers to housing posed by a criminal history. This is complicated, though. The Commission's synopsis inaccurately says that public housing authorities (PHAs) are already required to consider rehabilitation as a factor in assessing an applicant with a criminal record. In fact, federal law requires housing authorities to consider rehabilitation only for housing applicants with substance abuse histories. As to criminal records, federal law prohibits PHAs from admitting applicants with certain felony convictions for finite periods, and gives housing authorities broad discretion to establish proscribed

time frames for denying admission to applicants with other criminal convictions. It is not clear what legal effect a state law requiring consideration of rehabilitation would have in situations where an applicant's convictions were more recent than the federally-permitted time bars established by a PHA. Legal services advocates are eager to work with the Commission to address these Supremacy Clause problems and to find a way that state law can improve access to affordable housing for individuals with criminal records, possibly through amendment of the provisional pardon law.

Third, there is a wide variety of jobs for which a state license is required. Current law says that a licensing board may find an applicant with a criminal record not suitable for the license only after considering: 1) the nature of the crime and its relationship to the job; 2) the degree of rehabilitation of the person; and 3) the time elapsed since the conviction or release (CGS §46a-80(c)). This is the appropriate legal standard, so we do not understand the rationale underlying the Commission's proposal to single out barbers, hairdressers, and cosmeticians as exempt from the application of this standard.

Finally, we support enhanced employer incentives to hire persons with criminal histories. The existing bonding programs are poorly publicized and under-funded. It is not clear whether the Commission's proposal to give "liability protection" to employers means an improved bonding program or some kind of qualified immunity, but the ideas are certainly worth exploring.